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W.P.No. 36315 of 2023

**IN THE HIGH COURT OF JUDICATURE AT MADRAS**

**DATED : 12.08.2024**

**CORAM :**

**THE HONOURABLE MR.JUSTICE N.ANAND VENKATESH**

**W.P.No.36315 of 2023**

D.Chandra

... Petitioner

-Vs-

- 1.The Director of School Education  
DPI Campus, College Road  
Chennai 600 006.
- 2.The Joint Director of School Education (Higher Secondary)  
Office of Director of School Education  
DPI Campus, College Road  
Chennai 600 006.
- 3.The Chief Educational Officer  
Tiruvallur District  
Tiruvallur.
- 4.The District Educational Officer (Secondary)  
Tiruvallur Education District  
Tiruvallur.
- 5.The Correspondent  
T.E.L.C.Kabis Higher Secondary School  
Pandur 631 203  
Tiruvallur District.

6.V.Sathish Rajkumar

... Respondents

**Prayer** : Writ Petition under Article 226 of the Constitution of India praying for the issuance of a Writ of Mandamus, to direct the respondents to pass orders for promotion of petitioner to the post of P.G.Assistant (Maths) in the 5<sup>th</sup> respondent



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school in accordance with Rule 15(4) of Tamil Nadu Recognized Private Schools (Regulations) Rules 1973 in consideration of representation/objection submitted by the petitioner dated 22.09.2023, within a time frame fixed by this Court.

For Petitioner : Mr.J.Jayamalan

For Respondents : Mrs.S.Mythreye Chandru  
Special Government Pleader (Education)  
for R1 to R4

Mr.P.Ganesan  
for Mr.K.Premnath  
for R5

Mr.R.Muthukannu for R6

### **ORDER**

This writ petition has been filed for the issue of a writ of mandamus directing the respondents to pass orders based on the representation/objection made by the petitioner on 22.02.2023, wherein the petitioner is seeking for promotion to the post of P.G. Assistant (Maths) in the 5<sup>th</sup> respondent School in accordance with Rule 15(4) of Tamil Nadu Recognized Private Schools (Regulations) Rules 1973 (hereinafter referred to as Rules 1973).

2.The case of the petitioner is that he was appointed as a Secondary Grade Teacher in the 5<sup>th</sup> respondent School which is a minority aided School on 06.06.1995. The appointment of the petitioner was approved with effect from 06.06.1995. The petitioner thereafter qualified herself with a post graduation degree in the year 2008 and further qualified with a B.Ed., degree in the year 2012. The petitioner was



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promoted to the post of B.T. Assistant with effect from 01.12.2012. This was also approved by the Department.

3.The further case of the petitioner is that she is eligible for promotion to the post of P.G. Assistant (Maths) in the 5<sup>th</sup> respondent School in the vacancy that arose due to the retirement of the incumbent.

4.The grievance of the petitioner is that the 5<sup>th</sup> respondent appointed the 6<sup>th</sup> respondent by way of direct recruitment without granting promotion to the petitioner. The petitioner has taken a stand that this is in violation of Rule 15(4) of the Rules 1973. In view of the same, the petitioner made an objection to the appointment of the 6<sup>th</sup> respondent. Since the same was not considered, the petitioner filed W.P.No.3897 of 2018, before this Court. This Court disposed of the writ petition by an order dated 22.02.2018, by directing the authority to consider the representation.

5.Pursuant to the above order, the 1<sup>st</sup> respondent through proceedings dated 13.12.2018, informed the petitioner that there is a dispute over the management of the 5<sup>th</sup> respondent School and hence a Judge Administrator was appointed to administer the TELC schools and further direct payment has been ordered by the department. In the light of this development, the petitioner was informed that the proposal for approval for the appointment of the 6<sup>th</sup> respondent as P.G. Assistant



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(Maths) was returned that the request made by the petitioner for promotion also cannot be considered.

6.The petitioner has further contended that the dispute over the management has been resolved and pursuant to the elections, a new management took over in July 2023. In the light of this development, the petitioner once again submitted a representation on 22.09.2023 to the 4<sup>th</sup> respondent and also a copy was marked to the 3<sup>rd</sup> respondent and the petitioner sought for promotion to the post of P.G. Assistant (Maths). Since the same was not considered, the present writ petition has been filed before this Court seeking for appropriate directions.

7.The 3<sup>rd</sup> respondent has filed a counter affidavit and the relevant portions are extracted hereunder:

8.It is submitted that in pursuant to the orders of the Hon'ble Court, the Director of School Education has perused all the related documents as per the orders of the Hon'ble Court has rejected the request of the petitioner vide Na.Ka.No.78904/W6/C1/2018, dated 13.12.2018, stating that the appointment of the 6<sup>th</sup> respondent Thiru.V.Sathishkumar Raj as P.G.Assistant (Maths) as not been approved since the TELC Kabis Higher Secondary School is functioning under direct payment system and hence, there is no power to approve the appointment of promotion of the Teachers to the District Educational Officer. However the direct payment system is now revoked and the school is now functioning under newly



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constituted management committee.

9. It is submitted that the TELC Kabis Higher Secondary School is a religious minority school. The management of the school is the appointing and promotion giving authority of the above said school. If the management of the school appoint or promote any person, if the appointment or promotion is within the Rules and Government Orders in force, the appointment or promotion of the incumbent may be considered for approval and if the appointment or promotion is not within the Rules and Government orders, then the appointment or promotion could not be considered for approval.

8. The 6<sup>th</sup> respondent has also filed a counter affidavit. The 6<sup>th</sup> respondent has justified her selection to the post of P.G. Assistant (Maths). The relevant portion in the counter affidavit is extracted hereunder:

11. The sum up, it is submitted as follows:-

A) The 6<sup>th</sup> respondent V.Sathish Rajkumar, was appointed as P.G.Assistant, by way of Direct recruitment vide Order dated 26.08.2017, of the Judge Administrator and he is continuously working as such and teaching the students till date.

B) Aggrieved by the Appointment of the 6<sup>th</sup> respondent as P.G.Assistant, the petitioner Tmt.D.Chandra, filed two writ petitions seeking mandamus to consider and pass orders in her representations to promote her to the post of P.G. Assistant.

I) W.P.No.3897 of 2018, mandamus to dispose of the Appeal dated 8.9.2017. - Writ Petition Disposed. The 1<sup>st</sup> respondent disposed the appeal dated 08.09.2017 stating that the school is under the control of the Judge Administrator and Direct payment and hence the request



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of the petitioner is rejected.

II) Present writ petition in W.P.No.36315 of 2023, mandamus to promote her to post of P.G. Assistant in consideration of Representation/Objection by the petitioner dated 20.09.2023 and the above writ petition is listed for final hearing.

III) But, the petitioner herein has not challenged the appointment order of the 6<sup>th</sup> respondent, at all, either in the 1<sup>st</sup> Writ Petition or in the present Writ Petition. Moreover, she has not raised or established any prejudice caused to her in the event of the approval of the appointment of the 6<sup>th</sup> respondent. On the other hand, if the appointment of the 6<sup>th</sup> respondent is disturbed much prejudice would be caused to him.

C) The appointment of the 6<sup>th</sup> respondent, has since been ratified by the Secondary Education Board, TELC and necessary proposal has been sent by the 5<sup>th</sup> respondent School, for the approval of the appointment of the 6<sup>th</sup> respondent.

D) It is most humbly submitted that, as narrated herein above, the 6<sup>th</sup> respondent is continuously working for over 7 years. At this stage, his appointment is disturbed or cancelled would uproot the appointee from his livelihood. The Hon'ble Supreme Court in several cases even in the case of appointment made by way of furnishing false information or false certificate but the appointee continued for more than 5 years, inter-alia, held as follows:-

In a decision in Union of India and Other Vs. K.P.Tiwari 2003 (9) SCC 129 = (2002) AIR SCW 2684, in Paragraphs 4 & 5 of the judgment held as follows:-

**“4. It is necessary in this case to examine either the questions of law**



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or fact arising in the matter. Suffice to say that the respondent has been appointed now and has been in service for more than five years. We do not think, it would be appropriate to disturb that state of affairs by making any other order resulting in uprooting the respondent from the livelihood.

**5.In that view of the matter, we decline to interfere with the order made by the High Court. The Appeals are accordingly dismissed.”**

9.Heard Mr.J.Jayamalan, learned counsel for petitioner, Mrs.S.Mythreye Chandru, learned Special Government Pleader (Education) for R1 to R4, Mr.P.Ganesan, learned counsel for R5 and Mr.R.Muthukannu, learned counsel for R6.

10.It is quite clear from the stand taken by the 3<sup>rd</sup> respondent that as and when they receive the approval for the appointment of the 6<sup>th</sup> respondent to the post of P.G. Assistant (Maths), they will consider the same in accordance with the relevant Rules and Government Orders and decide as to whether such direct recruitment or promotion should be resorted to fill up the post. Thus, the 3<sup>rd</sup> respondent is open to deal with the claim made by both the petitioner and the 6<sup>th</sup> respondent .

11.The case of the petitioner is that the direct recruitment of the 6<sup>th</sup> respondent to the post of P.G. Assistant (Maths) is not in accordance with the procedure prescribed under Rule 15(4) of the Rules 1973. Per contra, the stand of the 5<sup>th</sup> and 6<sup>th</sup> respondents is that the very Rule has been put to challenge on the



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ground that it cannot be applied to the minority institution and it is pending consideration.

12.It is not necessary for this Court to go into the above issue and the same can be left to be decided by the 2<sup>nd</sup> respondent. In view of the same, there shall be a direction to the 2<sup>nd</sup> respondent to deal with the representation/consideration submitted by the petitioner dated 22.09.2023. While undertaking this exercise, the 2<sup>nd</sup> respondent shall issue notice to both 5<sup>th</sup> and 6<sup>th</sup> respondents and hear their objections and thereafter, a final decision shall be taken. This process shall be completed by the 2<sup>nd</sup> respondent within a period of six weeks from the date of receipt of copy of the order. Depending upon the decision taken by the 2<sup>nd</sup> respondent, the approval sought for the appointment of the 6<sup>th</sup> respondent or on the other hand, the promotion sought for by the petitioner can be decided.

13.In the result, this writ petition is disposed of with the above directions. No costs.

12.08.2024

KP

Internet: Yes  
Index: Yes/No



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**N.ANAND VENKATESH. J.,**

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07.08.2024